

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GEBRIEL H AHMED
Claimant

APPEAL 17A-UI-07339-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 11/13/11
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Gebriel H. Ahmed (claimant) appealed an unemployment insurance decision dated September 12, 2012, reference 03, that concluded he was overpaid \$8,951.16 in unemployment insurance benefits. A telephone hearing was held on August 7, 2017. Proper notice of the hearing was given to the claimant. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered. Official notice was taken of the administrative record.

ISSUES:

Is the appeal timely?

Has the claimant been overpaid benefits?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 13, 2011. The claimant filed for and received a total of \$8,951.16 in unemployment insurance benefits for the 24 weeks between November 13, 2011 and April 28, 2012. The unemployment insurance decision that disqualified the claimant was appealed and reversed by the administrative law judge in case 12A-UI-00220-JTT which allowed benefits. The employer appealed and the Employment Appeal Board (EAB) reversed the administrative law judge and denied benefits in its decision 12B-UI-00220 which was mailed to the claimant's address on April 19, 2012. It contained a warning that the decision would become final unless a request for rehearing was filed with the EAB within 20 days of the decision or a petition to District Court was filed within 30 days. The claimant did not do either and the decision became final agency action.

The claimant began receiving benefits, but then his benefits stopped after April 28, 2012. He went to his local office to ask why he was no longer receiving benefits and was told he would

need to appeal a decision that had been made by the EAB. The claimant did not receive the information and moved to Kansas City, Missouri. On September 12, 2012, the unemployment insurance decision finding the claimant had been overpaid was sent to the claimant's last known address. It contained a warning that any appeal must be filed by September 22, 2012.

The claimant did not update his address with Iowa Workforce Development until February 2013. On October 1, 2013, IWD mailed an overpayment statement to the claimant's address. IWD mailed an overpayment statement each year, but the claimant did not get any statements until April and May of 2017. Around the same time, the claimant filed for unemployment insurance benefits with Missouri and was told he would not be receiving any due to the overpayment in Iowa. The claimant then contacted IWD and received a copy of the decision finding he had been overpaid unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was not timely filed. Additionally, even if it was timely, the unemployment insurance decision finding the claimant has been overpaid would be affirmed.

Iowa Code section 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their

motive, candor, bias and prejudice. *Id.* In this case, the documents in the administrative record are more compelling than the claimant's testimony about events that happened five years ago.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. While the claimant may not have received the initial decision, it was because he failed to update the agency with his address after having knowledge of an adverse decision against him. He was mailed an overpayment statement to his correct address in 2013. Additionally, he received overpayment statements at the latest in May 2017 and did not appeal until July 21, 2017, which is more than ten days after receiving notice of the overpayment. The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge does not have jurisdiction to change the unemployment insurance decision.

In the alternative, even if the claimant's appeal was timely filed, the unemployment insurance decision would be affirmed. The EAB affirmed the initial unemployment insurance decision denying the claimant benefits. As a result, the claimant received benefits to which he was not entitled. The claimant did not appeal the underlying EAB decision to District Court within 30 days and it has become final agency action. As a result of the EAB decision denying benefits, the claimant was overpaid \$8,951.16 in unemployment insurance benefits.

DECISION:

The claimant's appeal was untimely and the administrative law judge does not have jurisdiction to change the underlying decision. Even if the appeal was timely, the unemployment insurance decision dated September 12, 2012, reference 03, would be affirmed. The claimant was overpaid \$8,951.16 in unemployment insurance benefits, which must be repaid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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